

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 64 OF 2006.
IN
CRIMINAL APPEAL NO. 47 OF 2006

Mohammed Yasin \$ Abu Mohd
Nazir Shaikh

..Applicant
(Accused No.11)

V/s
The State of Maharashtra

..Respondent.

Mr. Gavankar, Advocate for the applicant

Mr. D.P. Adsule, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 24TH JANUARY, 2007.

P.C.

. Heard Mr. Gavankar, learned Counsel for the applicant and Mr. Adsule, learned APP for the State. The applicant is original accused No.11. He, along with two other accused was convicted for dacoity punishable under section 395 r/w section 397 of Indian Penal Code, while some other accused were convicted for the offence punishable under Section 412 of IPC on a charge of receiving the stolen property. The dacoity had taken place in a jewellery shop on 5th May, 1988. The present

applicant was arrested on 24/10/1998. When he was in custody on 14/12/1998 test identification parade was held and he was identified as one of the dacoits. Some gold ornaments, which were taken by the culprits from the shop were also recovered from the present applicant. The applicant had preferred Criminal Appeal No. 47/2006 and that appeal is admitted. This application is filed for bail pending final hearing and disposal of the appeal.

2. The learned Counsel for the applicant contended that the present applicant was in custody from 24/10/1998 to 2/12/1999 and then he was released on bail. He was convicted on 16/11/2005 and since then he is again in jail. Thus, he has been in custody for a period of two and half years. According to him, the evidence about identification is not reliable, because identification was held almost 52 days after his arrest. He pointed out that in **Soni V. State of Uttar Pradesh, (1992) 2 SCC 368(I)**, the accused was acquitted on the ground that identification parade was held after lapse of 42 days from the date of his arrest. According to him, in view of this authority, the case against the applicant is weak. It appears that in the case of Soni

V. State of U.P except identification during the test identification parade there was no evidence against the accused. However, in the present case besides the identification before the Court and the test identification parade, there is also evidence about the recovery of stolen property on the basis of information given by the applicant himself. I am not impressed with the contention that merely because of delay in holding test identification parade, the applicant is entitled to be granted bail. It is to be noted that the applicant is also convicted for the offence of dacoity in another case about which he has preferred Criminal Appeal No.42 of 2006. That appeal is pending before this Court. Taking into consideration, the evidence in the present matter and his criminal record, I am not inclined to grant bail to him.

3. The application stands rejected.

(J.H. BHATIA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 47 OF 2006

Mohammed Yasin \$ Abu Mohd
Nazir Shaikh ..Applicant
V/s
The State of Maharashtra ..Respondent.

Mr. Gavankar, Advocate for the appellant

Mr. D.P. Adsule, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 24TH JANUARY, 2007.

P.C.

. Heard Mr. Gavankar, learned Counsel for the appellant and Mr. Adsule, learned APP for the State.

2. The appellant has been in custody for a period of two and half years. His application for bail is rejected by this Court. Therefore, final hearing of the appeal is hereby expedited. Paper book be prepared within a period of one month and thereafter the appeal

be listed for final hearing.

(J.H. BHATIA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 42 OF 2006

Mohammed Yasin \$ Abu Mohd
Nazir Shaikh ..Applicant
V/s
The State of Maharashtra ..Respondent.
Mr. Gavankar, Advocate for the appellant
Mr. D.P. Adsule, APP for the State.

CORAM : J.H. BHATIA, J.
DATE : 24TH JANUARY, 2007.

P.C.

. Heard Mr. Gavankar, learned Counsel for the appellant and Mr. Adsule, learned APP for the State.

2. The application for bail filed by the applicant has been rejected by this Court. According to the learned Counsel for the appellant, the appellant has already undergone sentence for about 5 years out of the total sentence of about 10 years and some fine. In view this fact, final hearing of the appeal is hereby

expedited. Paper book be prepared within a period of one month and thereafter the appeal be listed for final hearing.

(J.H. BHATIA, J.)